

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LEANGELA MATTHEWS,

Civil Action File No.

Plaintiff,

v.

VARIETY WHOLESALERS, INC.
D/B/A ROSES DEPARTMENT STORE,

Defendant.

NOTICE OF REMOVAL

COMES NOW VARIETY WHOLESALERS, INC. D/B/A ROSES DEPARTMENT STORE, named Defendant in the above-captioned matter, by and through its counsel of record, within the time prescribed by law, and files this Notice of Removal, showing the Court as follows:

1.

The above-named Plaintiff filed suit against Defendant VARIETY WHOLESALERS, INC. D/B/A ROSES DEPARTMENT STORE in the State Court of Cobb County, Georgia, which is within the Atlanta Division of this Court. 28 U.S.C.A. § 90 (a)(2). Said lawsuit is styled as above and is numbered as Civil Action File No. 22-A-731. Plaintiff's claims against Defendant includes claims of negligence.

2.

Plaintiff filed the Complaint on or about March 2, 2022. Defendant VARIETY

WHOLESALERS, INC. D/B/A ROSES DEPARTMENT STORE received service of summons and a copy of the Complaint on March 8, 2022. Defendant VARIETY WHOLESALERS, INC. D/B/A ROSES DEPARTMENT STORE files this notice of Removal within thirty (30) days after service of summons and a copy of this Complaint.

3.

Defendant Variety Wholesalers, Inc. is a North Carolina corporation with its principal place of business in the State of North Carolina. Defendant Variety Wholesalers, Inc. was not a citizen of the State of Georgia at the time of or immediately prior to the filing and service of said lawsuit, or at any time thereafter.

4.

Leangela Matthews is a citizen of the State of Georgia.

5.

Complete diversity of citizenship exists between Plaintiff and Defendant.

6.

Plaintiff claims injuries to her right hip, left knee, lower back and pelvic area; alleges that she walks with a limp; seeks pain and suffering; seeks past medical expenses of \$28,556.60; alleges future Sacro-illiac joint fusion surgery at a cost of \$96,596; alleges total future medical expenses of \$110,182; and has made a \$400,000

settlement demand (Exhibit "A"), thereby meeting the jurisdictional requirement for federal subject matter diversity jurisdiction. See Lowery v. Alabama Power Co., 483 F.3d 1184, 1262 n.62 (11th Cir. 2007) (quoting 28 U.S.C. § 1446(b)); Addo v. Globe Life & Accident Ins. Co., 230 F.3d 759, 761–62 (5th Cir. 2000); Williams v. Safeco Ins. Co., 74 F.Supp.2d 925, 929 (W.D.Mo. 1999); Southern Ins. Co. of Virginia v. Karrer, Civil Action No. 3:10-CV-84 (CAR), 2011 Westlaw 1100030 (M.D.Ga. Mar. 22, 2011); Golden Apple Management Co. v. Geac Computers, Inc., 990 F.Supp. 1364, 1368 (M.D.Ala. 1998); Jackson v. Select Portfolio Servicing, 651 F.Supp.2d 1279, 1281 (S.D.Ala. 2009); Barlow v. Variety Wholesalers, Civil Action No. 5:14-CV-375 (WLS) (M.D.Ga. Dec. 17, 2014); Devezin v. Wal-Mart Stores East, LP, Civil Action No. 1:13-CV-3721 (CAP) (N.D.Ga. February 20, 2015); Peterman v. Wal-Mart Stores, Civil Action No. 1:13-cv-91 (WLS), 2013 Westlaw 5210188 (M.D.Ga. Sept. 13, 2013); Farley v. Variety Wholesalers, Civil Action No. 5:13-CV-52 (CAR), 2013 Westlaw 1748608 (M.D.Ga. April 23, 2013); Streicher v. Sam's East, Inc., Civil Action File No. CV419-01(WTM) (S.D. Ga March 4, 2019). The amount in controversy, exclusive of interest and costs, exceeds \$75,000.

7.

This action is removable pursuant to 28 U.S.C. §§ 1332, 1441, based on complete diversity of citizenship between Plaintiff and Defendant.

8.

Pursuant to the provisions of 28 U.S.C. § 1446, Defendant has attached as Exhibit "B" copies of all the pleadings that were provided to and served upon Defendant, including copies of all pleadings that have been filed to date in the State Court of Cobb County, Georgia for the above-styled case.

9.

Pursuant to 28 U.S.C. § 1446, Defendant is not required to file a removal bond.

10.

Written notice of the filing of this Notice of Removal will be given to all parties as required by 28 U.S.C. § 1446.

11.

A true and correct copy of this Notice of Removal will be filed with the Clerk of the State Court of Cobb County, Georgia, as required by 28 U.S.C. § 1446.

WHEREFORE, Defendant VARIETY WHOLESALERS, INC. D/B/A ROSES DEPARTMENT STORE prays that the above-captioned lawsuit be removed to the United States District Court for the Northern District of Georgia, Atlanta Division.

McLAIN & MERRITT, P.C.

/s/ Howard M. Lessinger
Howard M. Lessinger
Georgia State Bar No. 447088

Attorneys for Defendant
VARIETY WHOLESALERS, INC.

3445 Peachtree Road, N.E.
Suite 500
Atlanta GA 30326-3240
(404) 266-9171
(404) 365-4514
(404) 364-3138 (Fax)
hlessinger@mmatllaw.com

The undersigned counsel certifies that the foregoing Notice of Removal has been prepared with one of the font and point selections approved by the court in LR 5.1B.

/s/ Howard M. Lessinger
Howard M. Lessinger

CERTIFICATE OF SERVICE

This is to certify that on March 12, 2022, I electronically filed a **NOTICE OF REMOVAL** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to attorneys of record.

McLAIN & MERRITT, P.C.

/s/ Howard M. Lessinger
Howard M. Lessinger
Georgia State Bar No. 447088
Attorneys for Defendant
VARIETY WHOLESALERS, INC.

3445 Peachtree Road, N.E.
Suite 500
Atlanta GA 30326-3240
(404) 365-4514
hlessinger@mmatllaw.com